

STATE OF MICHIGAN
COURT OF APPEALS

RONALD F. CARD,

Plaintiff-Appellant,

v

RONALD J. KASTEN and LESLIE KASTEN,

Defendants-Appellees.

UNPUBLISHED

June 24, 2003

No. 237454

Calhoun Circuit Court

LC No. 00-004872-NO

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

I. FACTS

On October 16, 1999, plaintiff attended a party at defendant's farm. During the party the guests had a hayride through a field where a bonfire was lit. The ride took place at approximately 8:00 p.m. Most of the guests got on the wagon using a hay bale that doubled as a step. The plaintiff got on the back by using a metal or hay bale step. Plaintiff rode near the back right of the wagon. The wagon had a wood floor with a 2¾ inch metal edge. The wood floor was approximately a half-inch higher than the metal edge. There were stake holes in the metal edge that measured 3 ⅜ inch by 1 ⅝ inch. There were bales of hay placed around the edge of the wagon covering most of the stake holes, but not all of the stake holes were covered. When the wagon stopped at the bonfire site, defendant began helping people off the wagon and plaintiff decided to jump. As plaintiff jumped, his toe caught the stake hole and upon landing plaintiff suffered an ankle injury. Plaintiff theorized that the slightly elevated floor increased the chances that his foot would get caught in a stake hole when he jumped.

I. STANDARD OF REVIEW

Claims that were dismissed through a grant of summary disposition are reviewed de novo by this Court. MCR 2116 (c)(10); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition should be granted when, except in regard to the amount of damages, there is no genuine issue in regard to any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. MCR 2.116(C)(10), (G)(4);

Veenstra v Washtenaw Country Club, 466 Mich 155, 164. In deciding a motion brought under this subsection, the trial court must consider affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 211.6(G)(5), in a light most favorable to the nonmoving party. *Veenstra*, *supra* at 164.

III. ANALYSIS

Plaintiff argues that the trial court erred in holding that defendants had no legal duty to warn about the stake holes and the uneven floor. He asserts that defendant Ronald Kasten saw the stake holes when he inspected the wagon during the afternoon, that he should have known of the uneven floor, that these conditions were not open and obvious at night, and that Kasten knew his guests would not see these conditions or be aware of them during the nighttime hayride.

It is undisputed that plaintiff was a social guest and therefore a licensee.

A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000); see also *Burnett v Bruner*, 247 Mich App 365, 372; 636 NW2d 773 (2001).

Plaintiff failed to establish that defendants were aware of the height differential. Kasten arguably had reason to know of it since he prepared the hay wagon that afternoon. There is no dispute but that he knew of the stake holes. However, in *Altairi v Alhaj*, 235 Mich App 626, 639; 599 NW2d 537 (1999), this Court stated that the proper inquiry focuses on the parties' knowledge of the danger, and that

"knowledge" implies not only knowledge of the dangerous condition, but also that "the chance of harm and the gravity of the threatened harm are appreciated." However, if a danger is open and obvious, the need to warn is obviated. . . . Any danger that is not obvious is not likely to be known to the landowner.

Here, defendants had stacked bales of hay as steps to provide a safe means of getting off the wagon. Therefore, they would not have anticipated that anyone would jump. Since defendants were not expecting anyone to jump, they would not have appreciated that the raised floor and stake hole may have posed a danger to someone who decided to jump. Accordingly, they did not have knowledge of the danger and therefore did not have a duty to warn plaintiff.

It is also noted that these conditions, even if dangerous, were as obvious to plaintiff as they were to defendants. Plaintiff is using the darkness factor as a basis for arguing that plaintiff would not have been aware of the conditions. However, Kasten testified that a 1,000 watt light bulb illuminated the area.

Thus, presuming that the bales of hay were not covering the edge of the hay wagon as defendants claimed, plaintiff would have been in as good a position as defendants to observe the differential and the stake holes.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Bill Schuette